

AMENDED IN SENATE APRIL 14, 2009

AMENDED IN SENATE MARCH 16, 2009

**SENATE BILL**

**No. 95**

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**Introduced by Senator Corbett**

January 22, 2009

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An act to amend Section 1770 of the Civil Code, and to amend Sections ~~3050~~, 11710, 11711, and 11722 of, and to add Section 4456.5 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 95, as amended, Corbett. California Car Buyers' Protection Act of 2009.

(1) Existing law makes it unlawful, punishable as a misdemeanor, for the holder of a dealer's license to do, or fail to do, specified actions with regard to the advertising, transfer, and sale of motor vehicles.

This bill would enact the California Car Buyers' Protection Act of 2009, which, among other things, would make it unlawful for a dealer who ~~acquires~~ *purchases* a used vehicle with a balance due to a secured party to fail to pay off the entire balance prior to ~~advertising the vehicle for sale or~~ transferring or selling the vehicle and would increase the amount of a dealer's bond from \$50,000 to \$100,000.

~~(2) Existing law creates within the Department of Motor Vehicles a New Motor Vehicle Board, which adjudicates disputes between new motor vehicle franchisees and their respective franchisors and hears appeals on decisions of the department affecting new motor vehicle dealers. The board also mediates disputes between members of the public and new motor vehicle dealers, distributors, and manufacturers.~~

~~This bill would exclude disputes involving motor vehicle purchasers and lessees from this authority of the board to mediate disputes.~~

~~(3)~~

(2) Existing law requires, among other things, that if any person suffers any loss or damage by reason of a specified violation of law by the dealer or his or her salesperson, then that person has a right of action against the dealer, the salesperson, and the surety upon the dealer's bond, in an amount not to exceed the value of the vehicle purchased from or sold to the dealer.

This bill would instead require that if a person who purchased or leased a motor vehicle or a motorcycle at retail suffers any loss or damage related to the purchase or lease of that vehicle by reason of any fraud or contract or statutory violation practiced on him or her by a licensed dealer or one of the dealer's salespersons acting for the dealer, on his or her behalf, or within the scope of the employment of his or her salesperson in connection with the purchase or lease of that vehicle, *or by reason of the violation by the dealer or salesperson of any of the provisions in the Vehicle Code relating to registration of vehicles and certificates of title*, then that person shall have a right of action against the dealer, his or her salesperson, and the surety upon the dealer's bond for actual damages plus any incidental and consequential damages.

~~(4)~~

(3) Existing law requires that claims against the surety upon a dealer's bond of a financing agency that has loaned money to a licensee or assignee be allowed only to the extent that the claims of any other person or entity with respect to the dealer's bond are satisfied first and are entitled to preference over the claims of the financing agency with respect to the dealer's bond, except as specified.

This bill would instead require that claims against the surety upon a dealer's bond, of a financing agency, including claims based on conditional sales agreements, or the purchase of conditional sales agreements or of any other agreement entered into with a licensee, be allowed only to the extent that the claims of any persons who purchased or leased a motor vehicle or a motorcycle at retail with respect to the dealer's bond be satisfied first and are entitled to preference over the claims of the financing agency and other persons or entities, except the Department of Motor Vehicles, with respect to the dealer's bond.

~~(5)~~

(4) The bill would also make technical and conforming changes to these provisions.

By creating new crimes, the bill would impose a state-mandated local program.

(6)

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known and may be cited as the  
2 California Car Buyers' Protection Act of 2009.

3 SEC. 2. The Legislature finds and declares all of the following:

4 (a) Many car buyers have lost confidence in the automotive  
5 marketplace, resulting in a reduction of revenues for sellers, local  
6 and county governments, and the state, contributing to job losses  
7 and the state's overall economic downturn.

8 (b) During the past year at least 480 ~~licensed and used~~ *new and*  
9 *used licensed* auto dealerships have gone out of business in  
10 California, far more than in any other state, and it is projected that  
11 the numbers will continue to accelerate for the foreseeable future.

12 (c) When consumers choose to purchase vehicles from auto  
13 dealerships that are licensed by the Department of Motor Vehicles,  
14 they have a reasonable expectation that the dealerships have  
15 sufficient resources to honor their contractual commitments.

16 (d) Car buyers have no reliable way to know in advance whether  
17 an auto dealer is on the brink of insolvency or is on a sound  
18 financial footing.

19 (e) When licensed auto dealerships go out of business they often  
20 fail to pay off liens, as agreed, and also fail to honor warranties,  
21 service contracts, and other services for which car buyers have  
22 paid in advance, costing thousands of car buyers millions of dollars  
23 in losses.

24 (f) The current federal assistance fails to provide any relief for  
25 car buyers, while providing taxpayer dollars to assist the auto  
26 manufacturers, dealers, and workers who are seeking assistance  
27 from the American public; yet it is ultimately car buyers who will  
28 determine the fate of our domestic auto industry by buying cars.

1 (g) When licensed auto dealerships go out of business without  
2 honoring their obligations, car buyers often face ruinous  
3 consequences, through no fault of their own, resulting in harm to  
4 their credit, repossessions that remain on their credit reports for  
5 seven to 10 years, job losses due to a lack of transportation, home  
6 foreclosures, and bankruptcy.

7 (h) The Department of Motor Vehicles projects that the current  
8 funding available for the Consumer Recovery Fund (CRF)  
9 established by enactment of Senate Bill 729 of the 2007–08 Regular  
10 Session will not be sufficient to meet all the demands made upon  
11 the CRF by car buyers with legitimate complaints. Even if  
12 sufficient funds were available, there is no authority to provide  
13 restitution from the CRF for losses incurred involving prepaid  
14 products, warranties, or services or to restore the credit of  
15 consumers whose credit is harmed by dealer insolvencies, lost  
16 jobs, lost income, or other damages consumers suffer due to a lack  
17 of transportation when vehicles are repossessed because auto  
18 dealers failed to pay off liens as promised.

19 (i) Honest dealers are also adversely impacted when  
20 unscrupulous auto dealers siphon off business and then harm the  
21 credit of their customers by going out of business without paying  
22 liens, as promised, shrinking the automotive market at precisely  
23 the time when it is sound public policy to expand the market and  
24 accelerate sales of newer, safer, cleaner motor vehicles.

25 ~~(j) California has established the New Motor Vehicle Board~~  
26 ~~which has the authority to overrule decisions rendered by the~~  
27 ~~Department of Motor Vehicles to discipline licensees in matters~~  
28 ~~of resolving disputes between dealers and manufacturers.~~

29 ~~(k) The New Motor Vehicle Board lacks the authority to require~~  
30 ~~licensees to provide any actual relief to car buyers, except for~~  
31 ~~mediating disputes between the public and licensees, which is at~~  
32 ~~best redundant with a function of the Department of Consumer~~  
33 ~~Affairs.~~

34 ~~(l) Most auto manufacturers voluntarily participate in dispute~~  
35 ~~resolution programs overseen and certified by the Department of~~  
36 ~~Consumer Affairs as complying with minimum standards~~  
37 ~~promulgated by the Federal Trade Commission, unlike the process~~  
38 ~~offered by the New Motor Vehicle Board, which sometimes leads~~  
39 ~~to lengthy delays.~~

40 SEC. 3. Section 1770 of the Civil Code is amended to read:

1 1770. (a) The following unfair methods of competition and  
2 unfair or deceptive acts or practices undertaken by a person in a  
3 transaction intended to result or that results in the sale or lease of  
4 goods or services to a consumer are unlawful:

5 (1) Passing off goods or services as those of another.

6 (2) Misrepresenting the source, sponsorship, approval, or  
7 certification of goods or services.

8 (3) Misrepresenting the affiliation, connection, or association  
9 with, or certification by, another.

10 (4) Using deceptive representations or designations of  
11 geographic origin in connection with goods or services.

12 (5) Representing that goods or services have sponsorship,  
13 approval, characteristics, ingredients, uses, benefits, or quantities  
14 that they do not have or that a person has a sponsorship, approval,  
15 status, affiliation, or connection that he or she does not have.

16 (6) Representing that goods are original or new if they have  
17 deteriorated unreasonably or are altered, reconditioned, reclaimed,  
18 used, or secondhand.

19 (7) Representing that goods or services are of a particular  
20 standard, quality, or grade, or that goods are of a particular style  
21 or model, if they are of another.

22 (8) Disparaging the goods, services, or business of another by  
23 false or misleading representation of fact.

24 (9) Advertising goods or services with intent not to sell them  
25 as advertised.

26 (10) Advertising goods or services with intent not to supply  
27 reasonably expectable demand, unless the advertisement discloses  
28 a limitation of quantity.

29 (11) Advertising furniture without clearly indicating that it is  
30 unassembled if that is the case.

31 (12) Advertising the price of unassembled furniture without  
32 clearly indicating the assembled price of that furniture if the same  
33 furniture is available assembled from the seller.

34 (13) Making false or misleading statements of fact concerning  
35 reasons for, existence of, or amounts of price reductions.

36 (14) Representing that a transaction confers or involves rights,  
37 remedies, or obligations that it does not have or involve, or that  
38 are prohibited by law.

39 (15) Representing that a part, replacement, or repair service is  
40 needed when it is not.

1 (16) Representing that the subject of a transaction has been  
2 supplied in accordance with a previous representation when it has  
3 not.

4 (17) Representing that the consumer will receive a rebate,  
5 discount, or other economic benefit, if the earning of the benefit  
6 is contingent on an event to occur subsequent to the consummation  
7 of the transaction.

8 (18) Misrepresenting the authority of a salesperson,  
9 representative, or agent to negotiate the final terms of a transaction  
10 with a consumer.

11 (19) Inserting an unconscionable provision in the contract.

12 (20) Advertising that a product is being offered at a specific  
13 price plus a specific percentage of that price unless (A) the total  
14 price is set forth in the advertisement, which may include, but is  
15 not limited to, shelf tags, displays, and media advertising, in a size  
16 larger than any other price in that advertisement, and (B) the  
17 specific price plus a specific percentage of that price represents a  
18 markup from the seller's costs or from the wholesale price of the  
19 product. This subdivision shall not apply to in-store advertising  
20 by businesses that are open only to members or cooperative  
21 organizations organized pursuant to Division 3 (commencing with  
22 Section 12000) of Title 1 of the Corporations Code if more than  
23 50 percent of purchases are made at the specific price set forth in  
24 the advertisement.

25 (21) Selling or leasing goods in violation of Chapter 4  
26 (commencing with Section 1797.8) of Title 1.7.

27 (22) (A) Disseminating an unsolicited prerecorded message by  
28 telephone without an unrecorded, natural voice first informing the  
29 person answering the telephone of the name of the caller or the  
30 organization being represented, and either the address or the  
31 telephone number of the caller, and without obtaining the consent  
32 of that person to listen to the prerecorded message.

33 (B) This subdivision does not apply to a message disseminated  
34 to a business associate, customer, or other person having an  
35 established relationship with the person or organization making  
36 the call, to a call for the purpose of collecting an existing  
37 obligation, or to any call generated at the request of the recipient.

38 (23) The home solicitation, as defined in subdivision (h) of  
39 Section 1761, of a consumer who is a senior citizen if a loan is  
40 made encumbering the primary residence of that consumer for the

1 purposes of paying for home improvements and the transaction is  
2 part of a pattern or practice in violation of either subsection (h) or  
3 (i) of Section 1639 of Title 15 of the United States Code or  
4 subsection (e) of Section 226.32 of Title 12 of the Code of Federal  
5 Regulations.

6 A third party shall not be liable under this subdivision unless  
7 (A) there was an agency relationship between the party who  
8 engaged in home solicitation and the third party or (B) the third  
9 party had actual knowledge of, or participated in, the unfair or  
10 deceptive transaction. A third party who is a holder in due course  
11 under a home solicitation transaction shall not be liable under this  
12 subdivision.

13 (24) (A) Charging or receiving an unreasonable fee to prepare,  
14 aid, or advise any prospective applicant, applicant, or recipient in  
15 the procurement, maintenance, or securing of public social services.

16 (B) For purposes of this paragraph, the following definitions  
17 shall apply:

18 (i) “Public social services” means those activities and functions  
19 of state and local government administered or supervised by the  
20 State Department of Health Care Services, the State Department  
21 of Public Health, or the State Department of Social Services, and  
22 involved in providing aid or services, or both, including health  
23 care services and medical assistance, to those persons who, because  
24 of their economic circumstances or social condition, are in need  
25 of that aid or those services and may benefit from them.

26 (ii) “Unreasonable fee” means a fee that is exorbitant and  
27 disproportionate to the services performed. Factors to be  
28 considered, when appropriate, in determining the reasonableness  
29 of a fee, are based on the circumstances existing at the time of the  
30 service and shall include, but not be limited to, all of the following:

- 31 (I) The time and effort required.  
32 (II) The novelty and difficulty of the services.  
33 (III) The skill required to perform the services.  
34 (IV) The nature and length of the professional relationship.  
35 (V) The experience, reputation, and ability of the person  
36 providing the services.

37 (C) Paragraph (24) shall not apply to attorneys licensed to  
38 practice law in California, who are subject to the California Rules  
39 of Professional Conduct and to the mandatory fee arbitration  
40 provisions of Article 13 (commencing with Section 6200) of

Chapter 4 of Division 3 of the Business and Professions Code, when the fees charged or received are for providing representation in administrative agency appeal proceedings or court proceedings for purposes of procuring, maintaining, or securing public social services on behalf of a person or group of persons.

(25) Failure of a dealer as defined in Section 285 of the Vehicle Code to comply with Section 4456.5, which requires dealers who ~~acquire~~ *purchase* a used vehicle with a balance due to a secured party to pay off the entire balance prior to ~~advertising the vehicle for sale or~~ transferring or selling the vehicle.

(b) (1) It is an unfair or deceptive act or practice for a mortgage broker or lender, directly or indirectly, to use a home improvement contractor to negotiate the terms of any loan that is secured, whether in whole or in part, by the residence of the borrower and that is used to finance a home improvement contract or any portion thereof. For purposes of this subdivision, “mortgage broker or lender” includes a finance lender licensed pursuant to the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code), a residential mortgage lender licensed pursuant to the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000) of the Financial Code), or a real estate broker licensed under the Real Estate Law (Division 4 (commencing with Section 10000) of the Business and Professions Code).

(2) This section shall not be construed to either authorize or prohibit a home improvement contractor from referring a consumer to a mortgage broker or lender by this subdivision. However, a home improvement contractor may refer a consumer to a mortgage lender or broker if that referral does not violate Section 7157 of the Business and Professions Code or any other provision of law. A mortgage lender or broker may purchase an executed home improvement contract if that purchase does not violate Section 7157 of the Business and Professions Code or any other provision of law. This paragraph shall not affect the application of Chapter 1 (commencing with Section 1801) of Title 2 to a home improvement transaction or the financing thereof.

~~SEC. 4. Section 3050 of the Vehicle Code is amended to read:~~

~~3050. The board shall do all of the following:~~

~~(a) Adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title~~



1 ~~2 of the Government Code governing those matters that are~~  
2 ~~specifically committed to its jurisdiction.~~

3 ~~(b) Hear and determine, within the limitations and in accordance~~  
4 ~~with the procedure provided, an appeal presented by an applicant~~  
5 ~~for, or holder of, a license as a new motor vehicle dealer,~~  
6 ~~manufacturer, manufacturer branch, distributor, distributor branch,~~  
7 ~~or representative when the applicant or licensee submits an appeal~~  
8 ~~provided for in this chapter from a decision arising out of the~~  
9 ~~department.~~

10 ~~(c) Consider any matter concerning the activities or practices~~  
11 ~~of a person applying for or holding a license as a new motor vehicle~~  
12 ~~dealer, manufacturer, manufacturer branch, distributor, distributor~~  
13 ~~branch, or representative pursuant to Chapter 4 (commencing with~~  
14 ~~Section 11700) of Division 5 submitted by any person. A member~~  
15 ~~of the board who is a new motor vehicle dealer may not participate~~  
16 ~~in, hear, comment, advise other members upon, or decide any~~  
17 ~~matter considered by the board pursuant to this subdivision that~~  
18 ~~involves a dispute between a franchisee and franchisor. After that~~  
19 ~~consideration, the board may do any one or any combination of~~  
20 ~~the following:~~

21 ~~(1) Direct the department to conduct investigation of matters~~  
22 ~~that the board deems reasonable, and make a written report on the~~  
23 ~~results of the investigation to the board within the time specified~~  
24 ~~by the board.~~

25 ~~(2) Undertake to mediate, arbitrate, or otherwise resolve any~~  
26 ~~honest difference of opinion or viewpoint existing between any~~  
27 ~~member of the public, except a retail motor vehicle purchaser or~~  
28 ~~lessee, and any new motor vehicle dealer, manufacturer,~~  
29 ~~manufacturer branch, distributor branch, or representative.~~

30 ~~(3) Order the department to exercise any and all authority or~~  
31 ~~power that the department may have with respect to the issuance,~~  
32 ~~renewal, refusal to renew, suspension, or revocation of the license~~  
33 ~~of any new motor vehicle dealer, manufacturer, manufacturer~~  
34 ~~branch, distributor, distributor branch, or representative as that~~  
35 ~~license is required under Chapter 4 (commencing with Section~~  
36 ~~11700) of Division 5.~~

37 ~~(d) Hear and decide, within the limitations and in accordance~~  
38 ~~with the procedure provided, a protest presented by a franchisee~~  
39 ~~pursuant to Section 3060, 3062, 3064, 3065, or 3065.1. A member~~  
40 ~~of the board who is a new motor vehicle dealer may not participate~~

1 in, hear, comment, advise other members upon, or decide, any  
2 matter involving a protest filed pursuant to Article 4 (commencing  
3 with Section 3060), unless all parties to the protest stipulate  
4 otherwise.

5 (e) Notwithstanding subdivisions (c) and (d), the courts have  
6 jurisdiction over all common law and statutory claims originally  
7 cognizable in the courts. For those claims, a party may initiate an  
8 action directly in any court of competent jurisdiction.

9 ~~SEC. 5.~~

10 *SEC. 4.* Section 4456.5 is added to the Vehicle Code, to read:

11 4456.5. If a dealer ~~acquires~~ *purchases* a used vehicle with a  
12 balance due to a secured party, the dealer shall submit to the  
13 department evidence in the form of a notarized receipt from the  
14 secured party that the dealer has paid off the entire balance prior  
15 to transferring the vehicle, or prior to the date when payment is  
16 due, whichever occurs first. It shall be unlawful for a dealer to  
17 ~~offer for sale, advertise for sale, sell~~ or transfer a used vehicle with  
18 a balance due to a secured party prior to paying off the entire  
19 balance and submitting the notarized receipt to the department.

20 ~~SEC. 6.~~

21 *SEC. 5.* Section 11710 of the Vehicle Code is amended to read:

22 11710. (a) Before any dealer's or remanufacturer's license is  
23 issued or renewed by the department to any applicant therefor, the  
24 applicant shall procure and file with the department a bond  
25 executed by an admitted surety insurer, approved as to form by  
26 the Attorney General, and conditioned that the applicant shall not  
27 practice any fraud or make any fraudulent representation which  
28 will cause a monetary loss to a purchaser, seller, financing agency,  
29 or governmental agency.

30 (b) A dealer's bond shall be in the amount of one hundred  
31 thousand dollars (\$100,000), except the bond of a dealer who deals  
32 exclusively in motorcycles or all-terrain vehicles shall be in the  
33 amount of ten thousand dollars (\$10,000). Before the license is  
34 renewed by the department, the dealer, other than a dealer who  
35 deals exclusively in motorcycles or all-terrain vehicles, shall  
36 procure and file a bond in the amount of one hundred thousand  
37 dollars (\$100,000). A remanufacturer bond shall be in the amount  
38 of fifty thousand dollars (\$50,000).

39 (c) Liability under the bond is to remain at full value. If the  
40 amount of liability under the bond is decreased or there is

1 outstanding a final court judgment for which the dealer or  
2 remanufacturer and sureties are liable, the dealer's or  
3 remanufacturer's license shall be automatically suspended. In order  
4 to reinstate the license and special plates, the licensee shall either  
5 file an additional bond or restore the bond on file to the original  
6 amount, or shall terminate the outstanding judgment for which the  
7 dealer or remanufacturer and sureties are liable.

8 (d) A dealer's or remanufacturer's license, or renewal of the  
9 license, shall not be issued to any applicant therefor, unless and  
10 until the applicant files with the department a good and sufficient  
11 instrument, in writing, in which the applicant appoints the director  
12 as the true and lawful agent of the applicant upon whom all process  
13 may be served in any action, or actions, which may thereafter be  
14 commenced against the applicant, arising out of any claim for  
15 damages suffered by any firm, person, association, or corporation,  
16 by reason of the violation of the applicant of any of the terms and  
17 provisions of this code or any condition of the dealer's or  
18 remanufacturer's bond. The applicant shall stipulate and agree in  
19 the appointment that any process directed to the applicant, when  
20 personal service of process upon the applicant cannot be made in  
21 this state after due diligence and, in that case, is served upon the  
22 director or, in the event of the director's absence from the office,  
23 upon any employee in charge of the office of the director, shall be  
24 of the same legal force and effect as if served upon the applicant  
25 personally. The applicant shall further stipulate and agree, in  
26 writing, that the agency created by the appointment shall continue  
27 for and during the period covered by any license that may be issued  
28 and so long thereafter as the applicant may be made to answer in  
29 damages for a violation of this code or any condition of the bond.  
30 The instrument appointing the director as the agent for the applicant  
31 for service of process shall be acknowledged by the applicant  
32 before a notary public. In any case where the licensee is served  
33 with process by service upon the director, one copy of the summons  
34 and complaint shall be left with the director or in the director's  
35 office in Sacramento or mailed to the office of the director in  
36 Sacramento. A fee of five dollars (\$5) shall also be paid to the  
37 director at the time of service of the copy of the summons and  
38 complaint. Service on the director shall be a sufficient service on  
39 the licensee if a notice of service and a copy of the summons and  
40 complaint are immediately sent by registered mail by the plaintiff

1 or the plaintiff's attorney to the licensee. A copy of the summons  
2 and complaint shall also be mailed by the plaintiff or the plaintiff's  
3 attorney to the surety on the applicant's bond at the address of the  
4 surety given in the bond, postpaid and registered with request for  
5 return receipt. The director shall keep a record of all process so  
6 served upon the director, which record shall show the day and hour  
7 of service and shall retain the summons and complaint so served  
8 on file. Where the licensee is served with process by service upon  
9 the director, the licensee shall have and be allowed 30 days from  
10 and after the service within which to answer any complaint or other  
11 pleading which may be filed in the cause. However, for purposes  
12 of venue, where the licensee is served with process by service upon  
13 the director, the service is deemed to have been made upon the  
14 licensee in the county in which the licensee has or last had an  
15 established place of business.

16 ~~SEC. 7.~~

17 *SEC. 6.* Section 11711 of the Vehicle Code is amended to read:

18 11711. (a) If a person who bought or leased a motor vehicle  
19 or a motorcycle at retail suffers any loss or damage related to the  
20 purchase or lease of that vehicle by reason of any fraud or contract  
21 or statutory violation practiced on him or her by a licensed dealer  
22 or one of the dealer's salespersons acting for the dealer, on his or  
23 her behalf, or within the scope of the employment of his or her  
24 salesperson in connection with the purchase or lease of that motor  
25 vehicle, *or by reason of the violation by the dealer or salesperson*  
26 *of Division 3 (commencing with Section 4000)*, then that person  
27 shall have a right of action against the dealer, his or her salesperson,  
28 and the surety upon the dealer's bond for actual damages plus any  
29 incidental and consequential damages.

30 (b) If the state or a political subdivision of the state suffers any  
31 loss or damage by reason of any fraud practiced on the state or  
32 fraudulent representation made to the state by a licensed dealer,  
33 or one of the dealer's representatives acting for the dealer, on his  
34 or her behalf, or within the scope of employment of the dealer's  
35 representatives, or suffers any loss or damage by reason of the  
36 violation of the dealer or his or her representative of any of the  
37 provisions of Division 3 (commencing with Section 4000) of this  
38 code, or Part 5 (commencing with Section 10701) of Division 2  
39 of the Revenue and Taxation Code, the state or a political  
40 subdivision of the state, through the department, shall have a right

1 of action against the dealer, his or her representative, and the surety  
2 upon the dealer's bond in an amount not to exceed the value of  
3 the vehicles involved.

4 (c) The failure of a dealer upon demand to pay the fees and  
5 penalties determined to be due as provided in Section 4456 shall  
6 be a violation of Division 3 (commencing with Section 4000) of  
7 this code, and Part 5 (commencing with Section 10701) of Division  
8 2 of the Revenue and Taxation Code and shall constitute loss or  
9 damage to the state in the amounts of those fees and penalties  
10 determined to be due and not paid.

11 (d) The claims of the state under subdivision (b) shall be  
12 satisfied first and entitled to preference over all claims under  
13 subdivision (a).

14 (e) The claims of a person under subdivision (a) who is not a  
15 licensee shall be satisfied first and entitled to preference over all  
16 other claims under subdivision (a).

17 ~~SEC. 8.~~

18 *SEC. 7.* Section 11722 of the Vehicle Code is amended to read:

19 11722. Claims, against the surety upon a dealer's bond, of a  
20 financing agency that has loaned money to a licensee or assignee  
21 thereof, or claims based upon accepted assignments of conditional  
22 sales agreements, or the purchase of conditional sales agreements  
23 or of any other agreement entered into with a licensee shall be  
24 allowed only to the extent that the claims of any persons who  
25 purchased or leased a motor vehicle or a motorcycle at retail with  
26 respect to a dealer's bond under Section 11711 shall be satisfied  
27 first and entitled to preference over the claims of the financing  
28 agency and other persons or entities, except the department, with  
29 respect to the dealer's bond.

30 ~~SEC. 9.~~

31 *SEC. 8.* Nothing in this act shall be construed to limit, in any  
32 way, the existing rights, remedies, or recourses available to any  
33 person who purchases or leases vehicles at retail.

34 ~~SEC. 10.~~

35 *SEC. 9.* No reimbursement is required by this act pursuant to  
36 Section 6 of Article XIII B of the California Constitution because  
37 the only costs that may be incurred by a local agency or school  
38 district will be incurred because this act creates a new crime or  
39 infraction, eliminates a crime or infraction, or changes the penalty  
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

O